

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DOUGLAS HELLAND,

No. 3:11-cv-01157-HU

Plaintiff,

ORDER

v.

HOFFMAN CONSTRUCTION
COMPANY OF OREGON,

Defendant.

Peter O. Hansen
Law Office of Peter O. Hansen
620 SW Fifth Avenue, Suite 1210
Portland, OR 97204

Attorney for Plaintiff

Gregory J. Miner
Bateman Seidel Miner Blomgren
Chellis & Gram, PC
888 SW Fifth Avenue, Suite 1150
Portland, OR 97204

Attorney for Defendant

HERNANDEZ, District Judge:

Magistrate Judge Hubel issued a Findings and Recommendation (#35) on June 27, 2013, in which he recommends that the Court should grant in part and deny in part Defendant's motion for partial summary judgment.¹ Plaintiff timely filed objections to the Findings and Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

I have carefully considered Plaintiff's objections and conclude that the objections do not provide a basis to modify the recommendation. I have also reviewed the pertinent portions of the record *de novo* and find no error in the Magistrate Judge's Findings and Recommendation.

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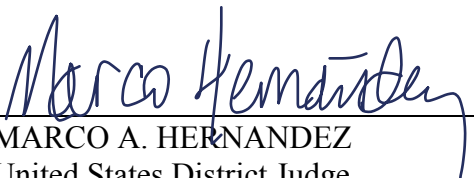
¹ Defendant filed a motion for partial summary judgment, which included a motion to strike. Def.'s Mot. Summ. J. (Dkt. #15). Defendant requested that the motion to strike be construed as a motion to dismiss under FRCP 12(b)(6). Def.'s Reply (Dkt. #26) 20. However, because the motion to dismiss was untimely, Judge Hubel construed the motion to strike as a motion for judgment on the pleadings. Findings & Recommendation 21.

CONCLUSION

The Court adopts Magistrate Judge Hubel's Findings and Recommendation (#35). Therefore, Defendant's motion (#15) is granted in part and denied in part as follows: in count one, the negligence per se violations under ORS § 654.010 and 29 C.F.R. §§ 1926.20(b), 1926.21(b) are dismissed; and count two, the ELL claim, is dismissed.

IT IS SO ORDERED.

DATED this 3 day of Nov, 2013.



MARCO A. HERNANDEZ
United States District Judge